

CANADA / JUDGMENT

Woychuk v. Woychuk

2019 BCSC 1956

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 1956 Woychuk v. Woychuk

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Woychuk v. Woychuk,

2019 BCSC 1956

Date: 20191114

Docket: E115038

Registry: Kelowna

Between:

Wesley Fredrick Woychuk

Claimant

And

Kimberly Carol Woychuk previously known as Kimberly Carol Jemson

Respondent

Before: The Honourable Mr. Justice Kelleher

Reasons for Judgment

Counsel for the Claimant:

G.R. LeClair

Counsel for the Respondent:

T. Moore

J. Norman

Place and Date of Hearing:

Kelowna, B.C.

April 25 and 26 and

August 29 and 30, 2019

Place and Date of Judgment:

Kelowna, B.C.

November 14, 2019

- [1] These are matrimonial proceedings. The claimant Wesley Woychuk is 57 years old and is a physician. The respondent Kimberly Woychuk is 46 and is employed as a community worker.
- [2] The parties were married on July 14, 1996. They separated on January 25, 2014 and were divorced on May 3, 2016.
- [3] This matter has been complicated by a series of events. Dr. Woychuk and the respondent entered into a separation agreement in 2015. However he soon went into serious default. An application was therefore made. On August 24, 2017, the parties agree to a consent order. Again, Dr. Woychuk did not fulfil his obligations under the consent order. As a result Dr. Woychuk is in considerable arrears.
- [4] Several events occurred after the consent order: he decided to cease working as an emergency room doctor; he decided he wished to do regenerative medicine; he had some health events requiring surgery; and he was involved in a project by his new wife to provide regenerative medicine and regenerative services to the public.
- [5] Then, and most significantly, he became cognitively impaired.
- [6] Dr. Woychuk is no longer able to practice medicine. His income consists entirely of disability payments.
- [7] Dr. Woychuk has made a number of choices to assist his new wife in her business rather than meet or attempt to meet his obligations under the consent order.

THE CHILDREN'S CIRCUMSTANCES

- [8] There are three children of the marriage: Lucas (May 20, 2003), Samuel (August 21, 2005) and Sebastian (September 10, 2007).
- [9] The children are currently 16, 14 and 12. They have attended a private school, Aberdeen Hall Preparatory School. In the fall of 2017, Samuel began to attend Dr. Knox Middle School. Lucas and Sebastian continued to attend Aberdeen Hall.

- [10] In the fall of 2018, Sebastian began attending Watson Road Elementary School. He did not like it. The respondent was given funds by her parents to pay for Sebastian to return to Aberdeen Preparatory.
- [11] In the fall of 2018 Lucas moved to Kelowna Secondary School but returned to Aberdeen in January 2019.
- [12] Currently, then, Lucas and Sebastian are attending Aberdeen and Samuel is in public school.

THE RESPONDENT'S CIRCUMSTANCES

- [13] The respondent worked as a probation officer until Lucas was born in 2003. The claimant, as an emergency room doctor, worked shift work and long days. The respondent was the main caregiver of the children throughout the marriage.
- [14] She attended to the care and maintenance of the family home. It was the respondent who attended the children's medical and dental appointments as well as school and extracurricular activities.
- [15] In 2015, after the parties separated, the respondent returned to work on a part-time basis. She obtained a position as a Food Service Coordinator and Event Planner at Aberdeen Hall. She worked 35 hours per week from August to June of each school year and was paid \$20 per hour.
- [16] The respondent left Aberdeen in 2018 when her children were moving away from the school.
- [17] The respondent hopes to return to work in the field of corrections or social work. Because she has been away from these fields for many years, she has taken several courses to update her skills.
- [18] The respondent passed the physical test and written exam for corrections officer positions but has not succeeded in obtaining a job. She was an unsuccessful applicant for a deputy sheriff position.
- [19] The respondent has not applied for a probation officer position because there have been no postings.
- [20] The respondent began work at Gospel Mission in November 2018. This was on a volunteer basis. She also applied to Community Living BC. She attended a Work Safe BC course and obtained her Occupational Health & Safety First Aid Level 1 Certificate.
- [21] She became a casual employee at Gospel Mission in February 2019 and has been averaging three shifts per week. She is starting a full-time position at Gospel Mission.
- [22] The respondent deposed that she has been diagnosed with epilepsy. She has been managing her seizures without medication.

- [23] The respondent deposed that she was the primary caregiver in the first part of the separation from January 2014 until the fall of 2015.
- [24] In early 2016 the children commenced a schedule of week-on week-off with the parents. In February 2017, Dr. Woychuk advised the respondent that he could only handle the children every second weekend.

THE CLAIMANT'S CIRCUMSTANCES

- [25] Throughout most of the marriage, the claimant was employed by Interior Health Authority as an emergency room physician in Kelowna and in Merritt, B.C. He practices through a professional corporation.
- [26] For several months in 2015, the claimant was on disability due to stress and addiction issues. He deposed that he attended a residential drug rehabilitation facility in Ontario. He received disability payments until his return to work part-time in March 2015 and full-time in September 2015.
- [27] In October 2015, the parties and their counsel succeeded in working out a separation agreement. Between the date of separation and date of the separation agreement the respondent was the primary caregiver, while the claimant worked and was in rehabilitation. From the date of the separation agreement, the parties shared parenting on a week on/week off basis.
- [28] Under the separation agreement child support was \$8,500 per month based on the claimant's Guideline income of \$500,000. The parties also agreed on spousal support of \$7,250 per month. The parties agreed that the quantum of spousal support could be reviewed in five years (November 1, 2020) or if any of the children ceased to reside in a shared parenting arrangement for six months or if the claimant retired as a physician on a non-voluntary basis.
- [29] In February 2017, 16 months after signing the separation agreement, the claimant unilaterally reduced child and spousal support from \$8,500 and \$7,250 respectively to a total of \$8,500 for February then \$4,000 or \$3,000 total per month for the months of March to June. He then paid nothing in the months of July and August 2017.
- [30] On July 14, 2017, the claimant filed a notice of application seeking to vary the separation agreement, reducing child support, spousal support and arrears.
- [31] On July 15, 2017, the claimant's home was destroyed in a wildfire. The home was also the location of a business called "The Regenerative Clinic" or "W180MD" operated by the claimant's new partner, Lauren Hamel. The nature and extent of Dr. Woychuk's role in the Regenerative Clinic is an issue in these proceedings.
- [32] On August 17, 2017, Dr. Woychuk married his partner who is now named Lauren Hamel Woychuk.

[33] On August 24, 2017, the parties attended a settlement conference with Associate Chief Justice Cullen. The result of this was a consent order. The parties agreed to cancel all arrears of child support; they agreed that the claimant would be attributed a Guideline income of \$344,500 and the respondent would have a Guideline income of \$30,000. Child support was agreed at \$5,800 a month. Spousal support was \$6,200 per month.

[34] The parties also agreed in the consent order:

1. The children would be in the respondent's day-to-day care with reasonable and generous access to the claimant;
2. This provision contemplated that the claimant may be working in "a private medical facility":

Child support may be reviewed after November 2019 in accordance with the review provisions of the Federal Child Support Guidelines and paragraph 4.2 of the Agreement. In addition to the financial disclosure required by the Federal Child Support Guidelines on review, in the event the claimant is working in a private medical facility (a "Clinic") owned or controlled by the claimant and/or the claimant's spouse, the claimant will use best efforts to provide particulars of the revenues and expenses of a clinic and dates of and procedures performed by the claimant and revenues generated by his efforts. Such documentation reasonably necessary to ascertain what, if any, Guideline income is received by the claimant from a Clinic will be provided.

3. The claimant was to pay tuition and expenses for one or more of the children attending Aberdeen but it was limited to a total of \$500 per month for 10 months per year. All other expenses in connection with Aberdeen were to be the respondent's responsibility.
4. Reasonable expenses of football and music class were to be equally shared. "Section 7 or extraordinary expenses" were to be agreed before incurring the expenses.
5. Both parties were to share necessary medical orthodontic and extraordinary dental expenses for items not covered by the health care plan.
6. Arrears of spousal support were cancelled with the exception of \$10,000 which was to be paid by December 31, 2017.
7. Spousal support could be reviewed after November 1, 2020.
8. If the claimant retires from medical practice on a non-voluntary basis or a disability affects his ability to practice medicine there can be a review of spousal support.

[35] The consent order contains other terms but those are the ones that are relevant to these proceedings.

[36] Notwithstanding the terms of the consent order, Dr. Woychuk now argues that the income of \$344,500 that is the basis of the consent order was agreed to in error.

[37] That is not open to Dr. Woychuk to complain of. He was represented by counsel.

- [38] Dr. Woychuk swore an affidavit in July 2017 in support of the application which led to the consent order. In it he expressed the intention to move out of the emergency room and into working in an office environment. He said he wanted to do that before turning 60. He was 55 at the time:
25. At age 55 I am moving toward office work before I am 60 years old. All my work is MSP billed and I have been in the ER for 30 years. Eventually, I have to move to something more workable and realistic for my age and abilities. The high stress, long hours, less money and burnout rate in my life has to be addressed. My hope is that I can take transition into Regenerative Medicine and pain management and work from an office in my home, where I can work with reduced overhead. I believe the best way to address this situation is for me to have my own medical practice operating out of my home. I have my current wife's support and she will also manage and work in that business. My wife is Lauren Woychuk, R.N. ("Lauren") also still works at the Kelowna Hospital as a registered nurse. Lauren and I are in the process of setting up the home-based clinic. Lauren through her company is paying the interest cost of moneys borrowed for the set-up of the clinic.
26. I believe this new clinic in all the circumstances will provide for the best short, medium and long range option for my sustainable income, which will allow me to support our children going forward and into their university years.
- [39] After Dr. Woychuk went through a residential treatment program, the monitoring department of the College of Physicians and Surgeons of British Columbia required periodic reports from his treating physician, Dr. Michael Bobyn.
- [40] In October 2017, Dr. Bobyn had written to the College because the three years of monitoring had finished and Dr. Woychuk wanted to be discharged from the monitoring program. Dr. Bobyn expressed the view that no further monitoring was necessary as Dr. Woychuk had been drug-free and alcohol free for the last three years. Dr. Bobyn supported the request that college monitoring be discontinued.
- [41] In January 2018, Dr. Bobyn reported to the College that Dr. Woychuk continued to be his patient and to be compliant with treatment advice and to be medically fit to practice medicine. The comment from Dr. Bobyn is:
- No concerns! Doing very well!!!
- [42] On October 20, 2017, the claimant suffered a neck injury in an accident with his son. He underwent surgery and was off work from October 2017 until February 2018.
- [43] In February 2018, the claimant returned to work on a restricted basis.
- [44] On April 16, 2018, Dr. Shawn McCann, a physiatrist, published an "independent medical examination report" at the request of counsel for Dr. Woychuk.

[45] Dr. McCann's prognosis regarding Dr. Woychuk's functional impairment and disability includes the following:

Mr. Woychuk has functional impairment and disability related to his neck pain and to the degenerative changes in his neck. He will have difficulty with any activities that require him to look down or up, for any long periods of time. He will have significant risk of reinjury, if he is involved in a physical altercation, in the emergency department, with a violent patient. His ability to concentrate and attend to information will be compromised when he is in significant pain and has significant stiffness in his neck. He may need to take medication for his neck, which will compromise his ability to concentrate, especially in the high-intensity environment of the emergency department

[46] Dr. McCann expressed the following regarding Dr. Woychuk's future work capacity:

It is probable he will not be able to continue working as an Emergency room physician due to the high demands of this type of work and his physical limitations. I think that Mr. Woychuk should make the transfer from the high intensity emergency environment, to more of an office based environment, where he can control the number of consults and control the type of patient's [sic] that he sees. He could also attempt to see cases that are much less complex and individuals who are easier to treat. In this way, he could better control his work environment, intensity of work and work postures required to be maintained while at work. This would result in less worsening of his neck condition over time and would prolong his medical career.

[47] This medical evidence is not contradicted.

[48] On July 31, 2018, Dr. Woychuk ceased practising as an emergency physician at Interior Health.

[49] Dr. Woychuk has deposed that since mid-2017 he has been experiencing cognitive changes regarding his short-term memory. He said that in 2018 the problem worsened and he was referred by his personal physician, Dr. Bobyn, for an MRI of his brain. He deposed that the MRI showed "generalized atrophy" of his brain.

[50] Dr. Woychuk was then referred to Dr. Adam Gambouras, a clinical neuropsychologist.

[51] On April 8, 2019, Dr. Gambouras provided a report to Dr. Bobyn. In it he concludes "on the basis of the neuropsychological evaluation, the patient demonstrated significant deficits across the majority of assessed cognitive domains."

[52] Dr. Gambouras reached these conclusions:

Undoubtedly, current deficits are far worse than would be expected for this patient (given academic, work histories), and diagnostically, considering the magnitude of certain observed impairments, he would certainly meet DSM-5 criteria (A) for a major neurocognitive disorder. Etiologically, while not totally clear, based on the provided history, it could be hypothesized that current dysfunction and course reflect a predisposed dementia process with an earlier-than-expected onset due to past TBIs. In any event, if not already done so, a full dementia workup

would be recommended.

The patient appears to be managing reasonably well with his basic day-to-day activities, and as such, he should carry on with his current levels of activity, as well as continue to utilize compensatory strategies (e.g., memory and organizational aids) to circumvent working memory and short-term memory difficulties.

Regarding work, the patient reports that, with using compensatory strategies (i.e., changing his workload from an acute ER setting to a clinic that provides more elective services; he frequently uses notes reminders), he believes he is adequately handling his work duties and responsibilities at this time. However, current assessment results do raise serious concerns whether the patient is still in a position, cognitively, to continue to work as a MD, providing any medical care and support to clients. Accordingly, I informed the patient that based in large part on assessment results, Dr. Bobyn would be contacting the College of Physicians and Surgeons of BC in order to (1) report concerns and (2) obtain any direction with respect to our ongoing involvement with the patient and his continuing to work moving forward. The patient expressed a strong desire obviously to continue to work as a MD in some capacity for the foreseeable future; hopefully, his College and/or the CMPA can serve to address these questions for him.

[53] On April 9, 2019, Dr. Woychuk received an email from the College of Physicians and Surgeons of BC. The College advised that it had received "a third party concern" about his health. He was requested to take a leave of absence from practice. Dr. Woychuk complied with this request.

[54] The College advised him that he could be returned to active licensure status on confirmation from his treating physician that he is fit to practice, followed by an interview at the College prior to a return to work.

[55] Thus, Dr. Woychuk is not currently licensed to practice medicine.

[56] Both parties made applications which are before me. The claimant sought:

1. An order varying, changing, rescinding, suspending or terminating, prospectively or retroactively, the consent order and substituting for child support of \$1,875 per month;
2. He proposes paying spousal support of \$1,293 per month commencing January 1, 2019 until further order;
3. An order that all arrears be cancelled or reduced and that FMEP enforcement be suspended or terminated; and
4. An order that before January 1, 2020, the respondent provide evidence to the court proving her efforts to become economically self-sufficient and that there be a review of continued entitlement to spousal support by June 1, 2020.

[57] The second application was filed on November 22, 2018 by the respondent Kimberly Woychuk. She seeks:

1. An order to enforce the terms of the consent order of August 24, 2017, that:
 - a) the claimant pay child support and retroactive child support for the children of the marriage including special and extraordinary expenses;
 - b) the claimant pay his portion of section 7 expenses both ongoing and retroactive; and
 - c) the claimant pay spousal support and retroactive spousal support pursuant to the consent order and to the Family Law Act and the Divorce Act.
 2. An order to enforce paragraphs 4.8 and 7.23 of the separation agreement that the claimant pay his proportionate share of the monthly RESP contribution and life insurance policy payments for the children;
 3. An order that the claimant provide security to the respondent for the child and spousal support payable, both retroactive support and ongoing child and spousal support in accordance with the terms of the consent order and an order granting this application which may determine the arrears in support;
 4. An order that the consent order be varied to specify the costs for football and music for which the claimant shall pay one-half;
 5. An order that the claimant forthwith provide details of the insurance settlement/compensation he is to receive;
 6. An order that restrains the claimant from disposing or disbursing any insurance settlement/compensation funds received by him including, but not limited to Regenerative Clinic until there is a full payment of arrears; and
 7. Pursuant to Rule 15-1(18) of the Supreme Court Family Rules, that paragraph two of the consent order be amended to reflect the following words as underlined \$5,800 per month.
- [58] The claimant did not contribute \$500 per month to Aberdeen School between December 2017 and June 2018 as required by s. 6 of the consent order:
6. The claimant's total contribution to tuition and all other expenses related to one or more of the children attending Aberdeen private school is limited to the total sum of \$500 per month for 10 months, September through June of each school year. All other expenses related to any of the children's attendances at Aberdeen Private School will be the sole responsibility of the respondent or paid from the Table amount of Guideline support paid by the claimant.
- [59] The claimant also failed to pay for music and football as per s. 7 of the consent order:
7. The claimant and respondent will equally share the reasonable expenses of football and music classes. All other section 7 are extraordinary expenses must be agreed to between the parties prior to the expense being incurred, or the incurring party will be solely responsible for that expense.

[60] In December 2017, the claimant stopped paying child support and s. 7 expenses. The only payments he made thereafter were \$3,000 on May 1, 2018, \$1,500 on August 13, 2018 and \$1,500 on October 25, 2018. As of November 2, 2018, arrears were \$145,593.19.

W180MD

[61] The claimant's spouse is the sole shareholder of 1072434 B.C. Ltd. which operates W180MD, "The Regenerative Clinic". Advertising for this business includes a photograph of Dr. Woychuk and Lauren Hamel Woychuk. It says this about Dr. Woychuk:

Medical Director

Dr. Woychuk received his medical doctorate from the University of British Columbia in 1987. He then made his way to the Okanagan Valley to work as an Emergency Physician at Kelowna General Hospital where he continues to provide care to this day

[62] Lauren Woychuk is referred to as the "Director of Operations". He and she are referred to in the marketing material as "Our Experts".

[63] Dr. Woychuk is insistent that he has no financial interest of any kind in W180MD. He was steadfast in cross-examination that his wife Lauren is the sole owner. It is she who runs the business.

[64] An article in Okanagan Woman magazine in Winter 2016 describes W180MD as a boutique cosmetic clinic providing a "rejuvenation oasis" in the Okanagan. The article includes this:

Dr. Wes and his wife, Lauren wanted to open W180MD because they both dreamed of offering hormone replacement therapy and stem cells therapy in the interior of BC. Lake Country was the ideal location because it offered a very private environment for their clinic.

"Our clinic is actually located in a residential area of Lake Country. It is away from the hustle and bustle - with full access to a quiet outdoor pool, a beautiful view of the mountains, lake and forest," Dr. Wes explains.

Cosmetic treatments and skin care products offered by W180MD enhance the confidence of patients. "We believe that subtle, natural enhancements on the outside, play a big role in how we feel on the inside," Dr. Wes says.

The couple married last summer and both have strong personal interests in anti-aging and regenerative medicine. They are planning their upcoming honeymoon in Dubai, a city they believe to be ahead of the game in this industry.

[65] The clinic's website said this about the claimant:

Dr. Wesley Woychuk, MD

Respected for his attentive and effective care, Dr. Woychuk - "Dr. Wes" to his patients - specializes in anti-aging medicine. From facial rejuvenation to body contouring, he brings decades of experience to his practice, helping patients reverse the signs of aging with a skilled, refined touch.

[66] The website refers to the claimant as "medical director". The website said this about him:

Experience you can trust

Over his many years of practice, Dr. Wes has established an impeccable reputation for his attentive, accurate and effectual care. Further to his extensive experience in emergency medicine, Dr. Wes applies his talents in the field of aesthetic medicine, enhancing the wellbeing of his patients with facial rejuvenation techniques, anti-aging treatment methods, and non-invasive cosmetic devices. Patients can anticipate a dedicated approach to addressing their anti-aging needs with a skilled and refined sensibility.

Leading the industry

Dr. Wes is a current member of the International Association for Physicians in Aesthetic Medicine (IAPAM) and the American Academy of Anti-aging Medicine (AAAM). His desire to enhance his patient's energy and vitality has led him to complete a Hormone Therapy Fellowship and a Fellowship in Stem Cell Therapy. He regularly attend seminars and workshops to stay abreast of the latest treatment methods and techniques.

Positions to date

- Emergency Physician and Trauma Team Leader, Kelowna General Hospital
- Clinical Instructor for Emergency Medicine at UBCO
- Privileges at Nicola Valley Mountain Hospital and Vernon Jubilee Hospital
- Physician for the National Freestyle Ski Team
- Volunteer Physician WHL team The Kelowna Rockets
- Prior Emergency Department Chief of Kelowna General Hospital

[67] The fall 2018 edition of Okanagan Woman contains a two-page article or advertisement for W180MD. It refers to the fact that Dr. Woychuk and Lauren Woychuk opened the doors to W180MD in July 2016. It is referred to as "an anti-aging and regenerative medicine oasis". It refers to the fact that July 2017 was just a year after it opened and that their home and the clinic was destroyed by wildfire. The article or advertisement refers to the new clinic services are stated to be:

- hormone replacement therapy;

- body contouring by Hot Sculpting;
- Botox & dermal filler;
- laser hair removal;
- skin tightening & resurfacing;
- facials;
- eyelash enhancement;
- feminine rejuvenation;
- advance skincare;
- PRP therapy (platelet rich plasma);
- microneedling;
- IV therapy;
- infrared sauna; and
- spray tanning.

[68] On or about September 10, 2017, 1072434 doing business as W180MD entered into a lease for 1540 Innovation Drive.

[69] W180MD purports that it entered into a consulting agreement with Dr. Drew Soderberg MD Inc. This "agreement" is curious in several respects. First, it lists W180MD as being located at 101 - 485 Groves Avenue, Kelowna, BC, V1Y 4Y6. It is dated November 1, 2017. My understanding is that W180MD began operating at 485 Groves later than November 1, 2017.

[70] A second curious aspect of it is that it does not contemplate any compensation to Dr. Soderberg's company except in "treatment procedures by" W180MD. Paragraph 5 of the agreement provides:

5. Compensation, benefits and expenses

5.1 Compensation

In consideration of the services to be rendered hereunder, including, without limitation, services to any Affiliated Company, Consultant shall be paid in treatment procedures by the Company during the course of this Agreement.

5.2 Benefits

Other than compensation specified in this 5.1, Consultant shall not be entitled to any direct or indirect compensation for services performed hereunder.

- [71] This seems, frankly, unlikely. First of all the consultant is a corporation. Treatments provided by W180MD are for natural persons. Moreover, it seems extraordinary that a physician directing patient care in the facility, advising clients on hormone replacement therapy and serving as a liaison between all medical staff would be "paid in treatment proceedings".
- [72] Sarah Drexel is a paralegal in the office of Counsel for the respondent. She swore an affidavit on April 25, 2019. She deposed that she did a search of the personal property registry searching "1072434" to search 1072434 B.C. Ltd. This is the company operated by the client's spouse, Lauren Woychuk.
- [73] The search disclosed four registered charges on personal property. The first was on October 4, 2017, it shows the two business debtors as 1072434 B.C. Ltd. and Wesley F. Woychuk M.D. Inc. The other three are dated October 12, 2017, October 31, 2018 and December 19, 2018. The first of those show the same debtors. The second and third show the debtors as 1072434 B.C. Ltd. and Lauren Woychuk, and 1072434 B.C. Ltd. and W180MD respectively.
- [74] At the end of the hearing on April 26, I advised counsel that there were very significant differences on the facts and I ordered cross-examination of Dr. Woychuk on his affidavits. At the same time, in the interests of fairness, I ordered that the respondent, Kim Woychuk, could be cross-examined as well.
- [75] The hearing was adjourned to August 29 and 30 for this purpose.
- [76] It is clear from Dr. Woychuk's cross-examination that his short-term memory has been dramatically affected. He is no longer driving. He no longer holds a license to practice medicine. Based on the evidence, there is no realistic possibility that he could ever return to medical practice.
- [77] I did not find cross-examination of Dr. Woychuk to be helpful. It is obvious that his short-term memory has been severely compromised by his illness. As a result he was unable to answer many relevant questions except by saying he did not know or did not remember.
- [78] In fact what is clear to me is that an explanation of the very curious arrangements surrounding W180 should have been provided from Lauren Woychuk. I must draw inferences from the lack of evidence from her, contrary to the claimant's position.
- [79] Assets of Dr. Woychuk include RRSPs of \$115,700, TFSA of \$16,900, medical corporate retained earnings of \$596,340 plus cash surrender value of a life insurance policy of \$361,709.
- [80] The circumstances Dr. Woychuk have changed since the applications were filed on November 7 and 22, 2018. For one, Dr. Woychuk's health has deteriorated significantly.
- [81] The issues which now must be addressed are:
1. Dr. Woychuk seeks to cancel or reduce arrears of child support and spousal support;

2. What child support and spousal support is payable on an ongoing basis;
3. Is the respondent making efforts to become self-employed;
4. Dr. Woychuk's Guideline income has diminished. What is the effective date or the effective dates for his new income;
5. Payment to the respondent of special and extraordinary expenses;
6. Payment by the claimant of RESP instalments and life insurance premiums;
7. Provision of security for further payment of retroactive and ongoing support;
8. An order that the claimant forthwith provide details of the insurance settlement compensation he may receive in the future;
9. An order restraining the claimant from disposing of or dispersing any insurance settlement or compensation funds received by him including by regenerative clinic until there is a full payment of arrears; and
10. An order pursuant to R. 15(18) of the Supreme Court Family Rules that paragraph two of the consent order be amended to reflect \$5,800 per month.

1. Cancellation or reduction of arrears

[82] There is no justification for reducing arrears. The test under the Family Law Act s. 174 is whether it would be "grossly unfair" not to reduce or cancel the arrears. There is a heavy burden on the parent seeking to reduce or cancel arrears. The courts should be slow to make such orders: *Wensel v. Rhodes*, 2012 BCCA 245.

[83] A summary of the law regarding applications to reduce or cancel arrears is cited in the well known case of *Earle v. Earle*, 1999 BCSC 283. There the court said that arrears will only be cancelled if the person is unable to pay now and will be unable to pay in the future. It is clear that Dr. Woychuk's medical corporation invested in W180MD. I do not have a full story of what is going on with that business. There has been certain disclosure but no evidence from the proprietor. In my view, an adverse inference should be drawn from the failure of Dr. Woychuk to require his spouse to give evidence in these proceedings.

[84] Dr. Woychuk has assets. The arrears can be reduced but only when there is a material change. The first material change, occurred at the time of Dr. McCann's diagnosis. The second occurred when he ceased being able to practice medicine.

[85] Dr. Woychuk chose to be working with his spouse in a corporation in which he did not have an interest. At the time of the consent order he was at least contemplating getting out of emergency medicine.

2. What child support and spousal support is payable on an ongoing basis?

- [86] There have been two material changes in Dr. Woychuk's circumstances. The first is the change in his physical condition as outlined in Dr. McCann's letter of April 16, 2018. From that date on I am satisfied that Dr. Woychuk's ability to earn income was compromised. He was not totally disabled. He should have earned considerably more than he did. But I conclude that from April 16, 2018 forward he must be imputed with an income of \$250,000. Spousal support and child support will be based on a guideline income of \$250,000.
- [87] By April 8, 2019, Dr. Woychuk's cognitive disability became total. His Guideline income thereafter is the gross value of his tax-free disability income.
3. Is the respondent making efforts to become self-employed?
- [88] There is no basis for imputing an income to the respondent which exceeds what she is actually earning. She is a full-time mother of three school-aged children. She has managed part-time work at Aberdeen and has taken on a full-time position with Gospel Mission. Additionally, she has applied for Sheriff positions and completed the tests for probation positions. She maintains an interest in it and may well attain such a position. I conclude that she has acted entirely reasonably in seeking to be self-sufficient. The financial effect on the respondent of Dr. Woychuk's failure and/or inability to comply with the consent order has been devastating.
4. Effective date for his new income
- [89] As I just explained, I conclude that Dr. Woychuk's Guideline income was \$250,000 from April 16, 2018 to April 8, 2019. Guideline child support and spousal support at the midrange is payable for that period. After April 8, 2019, it is reduced to the gross amount of his tax free disability income.
5. Payment of special and extraordinary expenses is based on his pre-reduction income
- [90] Payment of special and extraordinary expense those payments will continue based on the income determined in this judgment.
6. Payment of RESP and life insurance payments
- [91] These payments are due and owing up to April 8, 2019.
7. Provision of security for future payment for retroactive and ongoing support
- [92] The respondent seeks an order that the claimant provide security for child and spousal support payable both retroactively and on an ongoing basis. Given the severe change in Dr. Woychuk's circumstances, this is no longer a practical obligation to impose.
8. An order requiring the claimant to provide details of insurance received or to be received

- [93] The respondent seeks an order that the claimant forthwith provide details of the insurance settlement or compensation he is to receive. I have no difficulty ordering that there be full disclosure of the insurance and compensation received by Dr. Woychuk and to be received in the future.
9. An order that restrains the claimant from disposing or dispersing any insurance settlement compensation funds received by him including but not limited to Regenerative Clinic until there is a full payment of arrears
- [94] There is an ongoing obligation of family litigants to share financial information.
- [95] The respondent believes that Dr. Woychuk has an ownership interest in the Regenerative Clinic. The evidence does not establish that. The structure of the clinic may well have been arranged to keep Dr. Woychuk's income low but I do not conclude he has an ownership interest.
- [96] If the purpose was to avoid obligations under the Divorce Act and Family Law Act, it did not succeed. The court has imputed income based on what he should reasonably have been earning. In any event, Dr. Woychuk's plans changed and he was no longer the "medical director" of the Regenerative Clinic and no longer plays any significant role in it.
- [97] I accept the evidence of Dr. Woychuk that he does not have any ownership interest. He did assist the clinic financially through his corporation and by providing guarantees for equipment but that is not the same as having an ownership interest.
10. Pursuant to R. 15-1(18) an order that paragraph two of the consent order be amended to reflect the proper amount of \$5,800 a month.
- [98] This correction of the consent order is hereby ordered.
11. Costs for football and music
- [99] The costs for football and music will continue to be paid one-half by Dr. Woychuk.
- [100] The respondent sought special costs. She is certainly entitled to ordinary cost. The respondent enjoyed substantial success in these applications. However, while Dr. Woychuk is to be criticized for preferring to assist his new wife in her new venture, rather than meeting or attempting to meet his child support and spousal support obligations this does not amount to reprehensible conduct attracting special costs.

"Kelleher J."

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